

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION OF**  
**SOUTH CAROLINA**  
**DOCKET NO. 2021-324-WS**

**IN RE: Application of Kiawah Island Utility, Incorporated to File Proposed Changes in Rates, Charges, Classifications and/or Regulations for Water and Sewer Service.**

**REBUTTAL TESTIMONY  
OF  
BENJAMIN E. NICHOLSON, V**

1   **Q.     PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS FOR**  
2       **THE RECORD.**

3   A.    My legal name is Benjamin E. Nicholson, V. I have gone by “Ned” my entire life. I am an  
4       equity partner with the law firm of Burr & Forman, LLP which is located at 1221 Main  
5       Street, Columbia, South Carolina 29201. You probably know Burr & Forman as  
6       previously the McNair Law Firm in South Carolina. In January of 2019, McNair joined  
7       Burr & Forman, an Alabama-based, southeastern-regional law firm.

8   **Q.     ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**  
9       **PROCEEDING?**

10 A.    I am presenting testimony on behalf of the applicant, Kiawah Island Utility, Inc. (“KIU”).

11 **Q.     PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
12 **EMPLOYMENT EXPERIENCE.**

13 A.    I went to high school in my home county of Edgefield. I received a Bachelor of Arts degree  
14       *magna cum laude* from Wofford College in 1984 and was inducted into Phi Beta Kappa’s  
15       Wofford chapter. I received a Juris Doctor degree from the University of South Carolina’s

1 School of Law in 1987. After I took the Bar, I began work as a judicial law clerk for the  
2 Honorable Tommy Hughston, then of Greenwood. I began as an associate attorney in the  
3 litigation section of the McNair Law Firm in August of 1989. As I noted previously,  
4 McNair is now part of Burr & Forman. I was a shareholder at McNair, and at the time of  
5 the combination with Burr, I was the Chair of the firm's Litigation Practice Group. I am  
6 currently a member of Burr's Construction and Project Development Practice Group,  
7 which as the name says, is for attorneys whose practices are focused on construction law.

8 **Q. WHAT IS THE PURPOSE OF TESTIMONY IN THIS PROCEEDING?**

9 A. The purpose of my testimony is to rebut the testimony of Ms. Dawn M. Hipp to the effect  
10 that KIU is not entitled to include a \$2.4 million settlement with KIU's pipeline contractor,  
11 Mears Group, Inc., as part of Gross Plant in Service.

12 **Q. HAVE YOU FORMED AN OPINION REGARDING THE REASONABLENESS**  
13 **OF THE \$2.4 MILLION DOLLAR SETTLEMENT WITH RESPECT TO KIU'S**  
14 **APPLICATION OF THAT AMOUNT TOWARDS A RATE INCREASE?**

15 A. Yes. To begin, Ms. Hipp testifies that the \$2.4 million should not be considered as part of  
16 KIU's reasonable business costs to be part of its rate request. I will disagree with the  
17 foundation of Ms. Hipp's testimony and will demonstrate that the settlement was a  
18 reasonable and prudent outcome of a highly contested and very complex construction and  
19 insurance dispute, and that it in no way means that KIU did anything wrong such that it  
20 should be charged with these costs.

21 **Q. WHAT ARE YOUR QUALIFICATIONS TO GIVE THIS OPINION?**

22 A. For the last thirty-three years, I have been what is called a commercial or business litigation  
23 attorney, with a large emphasis on construction law. I also have advised many clients

1 including insurance companies, contractors, owners, and end users of development projects  
2 with respect to insurance coverage matters. I have tried numerous cases in South Carolina  
3 state court, as well as the United States District Court for the District of South Carolina. I  
4 have argued numerous cases before the South Carolina Court of Appeals, the South  
5 Carolina Supreme Court, and the Fourth Circuit Court of Appeals. A sampling of opinions  
6 of courts is attached to my Curriculum Vitae which is attached as Exhibit 1 to my  
7 testimony. I have been certified by the South Carolina Supreme Court as a mediator in  
8 South Carolina for several years.

9 I have been active in bar associations in the construction law field. I have been a  
10 member of the American Bar Association's Construction Law Forum for a quarter century,  
11 and I am the 2019-2020 Immediate Past Chair of the Construction Law Section of the South  
12 Carolina Bar Association. I am currently still a member of the Construction Law Section's  
13 Governing Council. I have been actively involved in the South Carolina Bar's  
14 Construction Law Section for decades, including organizing Continuing Legal Education  
15 Seminars and events.

16 Over the years, I have been recognized by publications such as Best Lawyers in  
17 America, since 2011 I think, Super Lawyers, AV rating in Martindale Hubbell, Columbia  
18 Business Monthly's "Legal Elite," and such publications. A few of my construction law-  
19 related representations include:

- 20 • Lead construction law counsel for SCE&G, now Dominion, in the resolution of \$300  
21 million dollars in mechanics liens filed on the V.C. Summer Units 2 & 3 project  
22 following the Westinghouse bankruptcy.

- 1 • I represented a Fortune 100 tire manufacturing company in a design and construction  
2 defect case against an engineering firm and construction company that designed and  
3 built the manufacturing company's South Carolina plant.
- 4 • I represented Richland County in an eight-figure bid dispute and won at the  
5 administrative, trial court, and appellate court levels.
- 6 • I was lead counsel in national Fair Housing Act test case for a real estate developer and  
7 the National Association of Home Builders against a local municipality which was  
8 pushing back against low-to-moderate income housing projects.
- 9 • Represented one of the largest hospital systems in South Carolina in a construction  
10 defect case that also involved disputes with various insurance carriers.
- 11 • Defended an upstate County against an airport contractor's extra compensation claim  
12 and sued the project engineer for malpractice in the same lawsuit.
- 13 • As an offshoot of my litigation practice, over the last decade I have frequently advised  
14 owners and contractors on the negotiation and execution of construction contracts,  
15 including their insurance provisions.
  - 16 ○ For example, I was construction-contract counsel for a South Carolina local  
17 governmental entity, led negotiations for the entity, and drafted a novel  
18 construction and design program management contract for management of a  
19 billion-dollar construction program.

20 In the insurance-coverage area, I have successfully defended an insurer in a bad  
21 faith case before a jury in Orangeburg County, and I have successfully sued many insurers  
22 for breach of their duty to defend over the years, including a case against Westport  
23 Insurance, one of KIU's insurance companies.



Over my career, I have participated in over one hundred jury trials, non-jury trials, and arbitrations, many of which have been construction related or insurance coverage related. As I will explain later, construction litigation often becomes intertwined with insurance-coverage litigation, and so a construction lawyer has to be able to navigate both fields. I have also actually been involved in disputes with drilling contractors, most recently a horizontal directional drilling dispute with a contractor on behalf of a South Carolina public water and sewer authority last year.

As legal counsel for primarily owners, and some contractors, in construction disputes, I constantly evaluate the settlement value of claims by my clients and against my clients. Most often, insurance availability affects those evaluations; indeed that was the primary driving factor in a mediation on a construction dispute case I was in all Monday before this testimony was filed. I feel I am well qualified to render an opinion on this matter.

**Q. WHAT DID YOU REVIEW IN ORDER TO REACH YOUR OPINION?**

A. I reviewed the the pre-filed testimony of Ms. Hipp related to this specific matter. I also reviewed certain pleadings, expert reports, discovery responses, and court orders in the following cases<sup>1</sup>:

- *Mears Group, Inc. v. Kiawah Island Utility, Inc.*, CA# 2:17-cv-02418-DCN in the United States District Court for the District of South Carolina (“Mears Litigation.”)

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<sup>1</sup> I did not undertake an exhaustive review of *all* discovery, i.e., the dozens of depositions and *all* documents potentially relevant to the Mears Litigation and the Insurer Litigation, as such is unnecessary for purposes of this opinion. An experienced litigator, much like a mediator, is not required to have a grasp of all factual and legal nuances of a case to be able to understand the competing issues and interests for purposes of evaluating a settlement. What is important is that the person opining as to settlement value of a case be able to understand the risk/reward calculus for the many issues and be able to simplify them and, using experience and a neutral viewpoint, come to a valuation of a case.

Mears sought more than **\$7 million dollars** from KIU in this litigation due to the costs associated with the collapse of a pipeline hole and lost pipe.

- *Kiawah Island Utility, Inc. v. Westport Insurance Corporation, Swiss Re International SE, Lloyds' Syndicate 1882 CHB; and Mears Group, Inc.*, CA# 2:19-cv-01359-DCN in the United States District Court for the District of South Carolina ("Insurer Litigation.") Here, KIU sued its all-risks insurance carrier, Westport, and Mears' Builder's Risk insurance carriers Swiss Re and Chubb, to cover the claim of Mears in the Mears Litigation.

I reviewed the Confidential Settlement Agreement and Release ("Settlement Agreement") by and among KIU, Mears, Westport Insurance Corporation ("Westport"), Swiss Re International SE (Swiss Re"), and Chubb Underwriting Agencies Limited for and on behalf of Syndicate 2488, the Successor of Syndicate 1882 ("Chubb.") The Settlement Agreement is the document evidencing the settlement of the Mears Lawsuit and the Insurer Lawsuit.

I reviewed KIU's submissions in this matter and its responses to ORS' information requests. I reviewed the Westport Insurance letter of May 18, 2018 denying coverage to KIU on its "all-risk" policy claim arising out of the dispute. I have also reviewed other coverage denial letters.

Finally, I also discussed the cases and settlement with one of KIU's legal counsel in the Mears lawsuit, James Weatherholz.

**Q. BASED ON YOUR REVIEW OF ALL THIS INFORMATION, PLEASE TELL US YOUR OPINIONS REGARDING THIS SETTLEMENT.**

1 A. I have three opinions, all in response to Ms. Hipp's three opinions listed at page 5:19-6:3  
2 of her prefiled testimony. My opinions are:

3 1. The \$2.4 million settlement payment is "used and useful" as the payment was required  
4 to settle disputed litigation for project costs with not just Mears, but also with insurance  
5 companies that should have paid the full Mears claim had they respected the  
6 commercial expectations of KIU.

7 2. I believe that KIU took reasonable and prudent steps to mitigate the risks to the  
8 customers and itself based on the documents it was presented by Mears, and in  
9 particular, the Certificate of Insurance that listed KIU as an additional insured on  
10 Mears' builders risk master policy.

11 3. I do not believe that KIU should bear the risk of litigation and settlement outcome as  
12 proffered by Ms. Hipp, since that is not a realistic view of the "real world" and how  
13 businesses engage in conflict resolution, particularly in complex, multi-party and multi-  
14 issue claims. The view espoused by Ms. Hipp could lead to excessive risk-taking by  
15 businesses, making litigation an "all-or-nothing" proposition and lead to risky business  
16 decisions that could ultimately be harmful to the customers and the business.

17 **Q. SO, WHY IS THE \$2.4 MILLION PAYMENT USED AND USEFUL?**

18 1. Ivory Tower vs. Real World

19 A. Ms. Hipp takes an extremely narrow viewpoint of the settlement, arguing essentially that  
20 it does not in any way improve on KIU's initial investment of \$9,742,848.83 in the  
21 Secondary Pipeline Project. In other words, her viewpoint is that the cost of the Project is  
22 the cost of the Project and the added costs do not add anything to the original Project scope.  
23 However, this is not a realistic viewpoint in the normal construction world.

1           Very few construction projects are 100% correctly specified, purely bid, with no  
2 mistakes or miscalculations made by any party. For example, there can be a mistake in the  
3 plans and specifications by the architect or engineer on a project that was not negligence  
4 by that design professional, but simply something that could not be anticipated based on  
5 the information known at the time. This could result in a change order for additional down  
6 time by the contractor on site. The owner would owe the contractor additional  
7 compensation to pay the contractor's sunk costs while it sits around doing nothing, but the  
8 owner gets no benefit from that. The reasoning that a contractor must provide "additional  
9 services, site restoration or physical infrastructure" in order for the cost to be intertwined  
10 with the actual and necessary costs of a project is not realistic or reflective of real-world  
11 practice.

12           Further, the opinion that the settlement was not "used and useful" does not comport  
13 with the everyday tug of war among owners, design professionals, and contractors on any  
14 construction project that necessarily result in thousands of tiny settlements. To take a hard  
15 line that requires perfection of any owner (or any party to the construction process for that  
16 matter) does not recognize the real world of construction. For example, an owner hires an  
17 architect. The architect prepares plans and specifications. The contractor bids on such  
18 plans and specifications. Assume there is a mistake in the design that costs the contractor  
19 an additional \$50,000 to construct that project. The owner then has to pay the contractor  
20 \$50,000 more because the owner is charged with liability for the architect's mistakes.

21           In the "Ivory Tower" viewpoint, the owner should remain whole because the  
22 architect should pay the owner the \$50,000 so the party at fault covers the overage. That  
23 is not the way the real world works. In South Carolina, the owner would have to hire a

1 lawyer to represent it, then the lawyer for the owner would be required by South Carolina  
2 statutory law to hire an expert witness, who under oath would have to opine that the  
3 architect committed professional malpractice. If the architect fights the lawsuit, the case  
4 may go to trial. To win its \$50,000, the owner would have to spend at least \$100,000 in  
5 attorney's fees and expert fees. This obviously makes no business sense whatsoever.  
6 Instead, typically the owner will eat the \$50,000 or try to get some nominal compensation  
7 from the architect. In such a situation, it would be hard to argue that the owner did not act  
8 reasonably and prudently.

9 Yet under Ms. Hipp's theory, the owner, who did absolutely nothing wrong and  
10 exercised reasonable business judgement, would be required to eat the \$50,000 because the  
11 owner did not obtain a 100% recovery from the party at fault. I strongly disagree with that  
12 conclusion. "Used and useful" cannot require perfection; it should only require that the  
13 efforts were reasonable and prudent exercises of business judgment.

14 2. The Settlement was Reasonable, Prudent and not a Concession of Fault.

15 With the above in mind, I turn to the merits of the settlement. In a nutshell, ORS'  
16 position is facially simple: (1) KIU was required by its construction contract with Mears  
17 to obtain builder's risk insurance that would have paid for the bore hole collapse and the  
18 lost pipe but did not: (2) any money paid by KIU to Mears because of the lack of such  
19 insurance is completely the fault of KIU, and so (3) KIU should not be able to pass its costs  
20 to its customers because of that. ORS buttresses its position by an Order in the Mears  
21 Litigation by the presiding judge who granted partial summary judgment to Mears on the  
22 issue that the contract required KIU to procure builder's risk insurance.

1           This position is inaccurate, imposes an impossible standard of perfection on KIU,  
2           and does not take into account the reasonable decisions of KIU when faced with real world  
3           problems caused in part by Mears, but mainly by the insurance companies. The ORS  
4           position for the most part ignores the role of the insurance companies in this matter, yet if  
5           the insurance companies had paid the claims, there would be no proceeding here regarding  
6           the \$2.4 million payment. Further, the insurance companies collectively contributed \$1.6  
7           million dollars to the overall \$4 million settlement payment to Mears, which is a large  
8           payment indicative that the insurers recognized that they had a lot to lose if all the claims  
9           went to trial.

10           ORS' position is that insurance *should* have covered the Mears claim, and so if it  
11           had, there would be no request from \$2.4 million. I believe KIU would agree with ORS  
12           that insurance should have covered the claim. However, ORS ignores the complications  
13           imposed by the insurance companies on any attempted recovery. An analysis of the two  
14           lawsuits is necessary to understand what happened and why there was not a full insurance  
15           payout.

16           A.     *The Insurer Litigation*

17           It is important to remember that the federal court Order granting partial summary  
18           judgment to Mears in the Mears Litigation regarding which party should have carried  
19           builder's risk insurance had nothing to do with whether or not the insurance companies  
20           were ultimately liable. That would have been determined in the Insurer Litigation.

21           KIU sued both its own insurer, Westport and Mears' builder's risk carriers, Swiss  
22           Re and Chubb, in the Insurer Litigation because they all refused to pay the Mears claim.  
23           KIU's position was that one, two or all of those insurance carriers should have paid the

1 Mears claim. Westport was an “all-risks” insurance carrier for KIU and its parent  
2 companies, which generally is the broadest of all possible insurance coverages and covers  
3 anything that is not specifically excluded in the policy.

4 KIU tendered the Mears claim to Westport, but Westport denied coverage primarily  
5 on the basis stated in a May 18, 2018 denial letter. The basis stated was that the pipeline  
6 collapse was caused by Mears’ own faulty workmanship and that the Westport policy  
7 excluded claims that were caused by faulty workmanship. This means that if Mears had  
8 proved that the pipeline collapse was just an accident that was no one’s fault, then Westport  
9 likely would have paid. However, that was not happening during the pendency of the  
10 Mears Litigation as Westport went so far as to hire its own expert witnesses to say the  
11 collapse was the fault of Mears.

12 So, does that mean that in the Mears litigation if Mears proved it was owed  
13 \$7,000,000 and the pipeline collapse was not due to faulty workmanship, then Westport  
14 would have turned around and paid that claim? Quite the contrary, in the obtuse world of  
15 insurance coverage litigation, Westport could require KIU to take the opposite position that  
16 it took in the Mears Litigation and prove in a second trial (the Insurer Litigation) that Mears  
17 was without fault.

18 To make matters more complicated, and expensive, Westport, Swiss Re and Chubb  
19 were able to successfully move the Insurer Litigation from South Carolina to federal court  
20 in New York, where they also planned to force KIU into an arbitration forum that would  
21 have been favorable to the insurers.

22 Now, why were Swiss Re and Chubb parties to the Insurer Litigation? One of the  
23 most important documents that ORS ignores in this matter is a Certificate of Insurance

1 (“COI”) provided to KIU by Mears which expressly provided that (1) Mears carried  
2 Builders Risk insurance; (2) identified the amounts of Builders Risk insurance coverage  
3 provided by Mears, (3) stated this coverage was primary to any other coverage and (4) most  
4 importantly, specifically listed KIU as an “Additional Insured” on this coverage. As an  
5 “Additional Insured,” KIU had the same right to insurance coverage as Mears on these  
6 Builder’s risk policies. A copy of the COI is attached to my testimony as Exhibit 2.

7 Thus, notwithstanding the Judge’s Order in the Mears Litigation, there was a good  
8 chance that Westport, Swiss Re and Chubb would end up with liability for the Mears claim  
9 in the Insurer Litigation. As stated earlier, the payment of \$700,000 by Westport to Mears  
10 and the total \$900,000 payment by Swiss Re and Chubb to Mears as part of the Settlement  
11 indicates that there was significant concern by those insurers of potential liability to KIU  
12 in the Insurer Litigation.

13 *B. The Mears Litigation*

14 KIU was faced with a \$7,000,000 plus claim in the Mears litigation going to trial.  
15 The case was settled just before it would have been tried. KIU had the real possibility of  
16 getting hit with a verdict in excess of \$7 million dollars with an uncertain and long path of  
17 litigation still before it in the Insurer Litigation. If KIU got hit with a large verdict, the  
18 only way to stop collection would be to post a \$7 million bond, which is a huge and costly  
19 undertaking. This bond would have to be in place during any appeal. In the meantime,  
20 Westport, Swiss Re and Chubb had signaled every intention to fight KIU as long as they  
21 could in any forum they could, a fight that would be years in one of the most expensive  
22 venues for costs and attorney’s fees, New York.  
23



1           C.       *The Settlement*

2           Given these factors, it was a prudent and reasonable decision for KIU to fashion a  
3           settlement where it paid Mears \$2.4 million directly and arranged for the insurers to pay  
4           another \$1.6 million to Mears.<sup>2</sup> Time was not on KIU's side. Further, KIU could easily  
5           have spent \$2.4 million in attorney's fees and costs and expert witness fees to take the  
6           Mears Litigation to a final judgment and do the same with the insurer defendants in the  
7           Insurer Litigation.

8           I almost always recommend a settlement to a party when that party can settle  
9           essentially for its litigation costs, even if that party has a legally and factually justifiable  
10          position, because it is very important for a litigant to ultimately have certainty in result.  
11          Also, lengthy litigation is a drain on corporate resources by allocating not just money, but  
12          personnel to work with counsel in the litigation. It is typically not a good investment for  
13          the President of a company to spend weeks in courtroom and years debating legal tactics  
14          as opposed to running the business. In this case, an inefficiently run business would  
15          eventually have resulted in more costs passed to the customers. KIU avoided all these  
16          issues by settling.

17          Also, there was no finality of any issue of fact decided by this settlement; per  
18          Section 3 of the Settlement Agreement, each party to the agreement made no admission of  
19          liability, which is standard in such matters. Given that the two litigations were settled with  
20          no party making an admission, it is not reasonable for ORS to conclude that any issue or  
21          fact was final and binding on any party.

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<sup>2</sup> A \$4,000,000 settlement on a \$7,000,000 drilling claim is reasonable – although this amount is nearly half of the original contract amount, the claim essentially represents a complete “do-over” of the main work of that project.

1           It is also not reasonable for ORS to ignore that the insurers took a hard line on  
2 coverage which forced KIU into a weak position in the Mears Litigation. The insurer's  
3 respective positions worked for them; it resulted in the insurers paying far less than they  
4 probably should have. Insurance companies on large complex claims are becoming more  
5 and more aggressive and look for reasons to deny coverage if possible. In particular,  
6 insurers have become more aggressive in coverage matters in the construction industry.  
7 There is a wealth of case law on that subject in our own court system; I have been involved  
8 in many such cases here over the years.

9           Therefore, back to my opening example of the architect malpractice claim worth  
10 \$50,000—like that example, the real world and the complexities of construction and  
11 insurance coverage litigation result in rational, reasonable and prudent business decisions  
12 by companies that reflect settlements and concessions at every level. The Settlement  
13 Agreement here was no different. The cost of such a Settlement Agreement is properly a  
14 part of a project's overall costs, since in today's litigious construction world, in order to  
15 complete projects there are often disputes with results that cannot be easily characterized  
16 by one party or the other's fault.

17 **Q. IF YOU HAVE NOT ALREADY ANSWERED THIS QUESTION, WHY WAS THE**  
18 **SETTLEMENT A PROPER MITIGATION OF RISKS?**

19 **A.** I have more or less answered that question; KIU had all-risks insurance, and it was provided  
20 a COI by Mears adding it as an Additional Insured for Builder's Risk coverage by two  
21 different insurance companies. I respectfully disagree with the Court order granting  
22 summary judgment in the Mears Litigation; I don't know how you can possibly square the

1 COI provided by Mears with the Court's decision. But that is what appeals are for. And  
2 that is also what the Insurer Litigation would ultimately have decided.

3 Finally, the ORS position that KIU did not demonstrate that it took necessary steps  
4 to mitigate losses makes no sense to me. KIU had a universal "all-risks" insurance policy,  
5 the broadest type of coverage available. KIU had a COI showing it was an additional  
6 insured on Mears' Builder's Risk policies. KIU hired one of the best known drilling  
7 contractors in the country on what everyone knew was a tough project. The ORS position  
8 simply is a bad case of hindsight.

9 **Q. SO WHY SHOULDN'T KIU BEAR THE RISK OF THIS AND PAY THE \$2.4**  
10 **MILLION WITHOUT ANY HELP FROM ITS CUSTOMERS?**

11 A. Again, the ORS position would have forced KIU to take the Mears Litigation and the  
12 Insurer Litigation all the way to final judgments. That is just not reasonable in today's  
13 world and would not have been a reasonable and prudent business practice. To ride a  
14 litigation horse that long might have gotten someone at the company fired. It would have  
15 been a waste of company resources and would have needlessly exposed the company to  
16 the risk of adverse results.

17 It also could very conceivably have distracted company management and resulted  
18 in excessive allocation of company resources to the litigations and not things that help the  
19 company and the customers—infrastructure, efficiency, service. I admit that I cannot put  
20 a price on all of this. What I can confidently say is that long-term complex commercial  
21 litigation takes its toll on a company like KIU—KIU is not a Fortune 500 company that  
22 can allocate managerial resources with little trouble. That and the prohibitive cost of

1 litigation are very real reasons why 95% or more of commercial disputes settle rather than  
2 going to a judgment by a jury, court or arbitrator.

3 **Q. DO YOU HAVE ANYTHING TO ADD TO YOUR OPINIONS TODAY?**

4 A. No, that concludes my testimony today.

## *Curriculum Vitae*

### **BENJAMIN E. NICHOLSON, V**

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<b>Education</b>	Wofford College, B.A., <i>magna cum laude</i> , 1984 Academic Major Award-Government Member, Phi Beta Kappa  University of South Carolina, J.D., 1987
<b>Employment</b>	Burr & Forman LLP (f/k/a McNair Law Firm) Private Practice – August 1989 – present  Judicial Law Clerk to Hon. Thomas L. Hughston, Jr. August 1987 to August 1989
<b>Primary Practice</b>	Complex Business Litigation with Emphasis on Construction, Insurance Coverage and Intellectual Property
<b>Bar Admissions</b>	South Carolina 1987 U.S. District Court, District of South Carolina 1989 U.S. Court of Appeals, Fourth Circuit 1989
<b>Professional Activities</b>	Member, South Carolina Bar Past Chair, Construction Law Section of South Carolina Bar, Current Council Member, Construction Law Section of SC Bar, Past Chair, Lawyer/Physician Relations Committee of SC Bar Member, Legal Action Network for Development Strategies, National Association of Home Builders Member, American Bar Association Construction Law Forum Member, Richland County Bar Association Certified Mediator, South Carolina Supreme Court
<b>Professional Recognition</b>	Best Lawyers in America: Commercial Litigation, Construction, and Intellectual Property Law Super Lawyers Columbia Legal Elite

### Selected Professional Presentations

- “What your Insurance Policy Really Says” and “Contract Litigation from A to Z in South Carolina” – November 2005 (Lorman)
- “What a Facilities Management Professional Should Know about Construction Liens, Bonds and Claims on Private Work Projects in South Carolina” – Presentation to SCFMA, February 2011
- “Construction Issues from the Owner’s Perspective: Minimizing Risk while Maximizing Dollars: The Role of the County Attorney in County Construction Projects” -- CLE to The South Carolina Association of County Attorneys, April 2014
- “Construction Law Update” to Government Law Section of SC Bar Association – CLE June 2014
- “Richland County v SCDOR: Status Report on SCDOR’s Claim of Control over the Penny Transportation Sales Tax,” -- CLE to The South Carolina Association of County Attorneys, July 2016
- “The 2017 Updates to the AIA Construction Contract Documents: More Fun Than Tax Law” -- CLE to The South Carolina Association of County Attorneys, August 2019
- “Recent Developments in Takings Law: *Knick* Was Just a Start; U.S. Supreme Court Blows Open the Standard for Regulatory Takings Cases in *Cedar Point Nursery v. Hassid*” -- CLE to The South Carolina Association of County Attorneys, August 2021

### Activities

Chairman, South Carolina State Museum Foundation (2015-2017)  
President, Palmetto Trust for Historic Preservation (2011-2012)  
President, Rotary Club of Five Points (2001-2002)  
Member, Shandon Methodist Church

### Expert Testimony

- Expert on reasonableness of attorney’s fees request. *ABT Building Products Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA*, Civil Action No. 5:01CV100-V in United States District Court for the Western District of North Carolina. Expert for the defendant.
- Expert on reasonableness of attorney’s fees request. *FMT, US, Inc. v. Siempelkamp Maschinen- und Anlagenbau GmbH and Swiss Krono SC, LLC* in the American Arbitration Association, Case No. 01-18-0004-7537. Expert for the defendant.

### Sampling of Published Cases:

- *Jinks v. Sea Pines Resort, LLC*, 2021 WL 4711408 (D.S.C. 2021)
- *Geismar N. Am., Inc. v. NPD Res., Inc.*, 2020 WL 4820336 (D.S.C. 2020), *aff'd*, 850 F. App'x 185 (4th Cir. 2021)
- *Guagliano v. Cameron & Cameron Custom Homes, LLC*, 2019 WL 2028705 (D.S.C. 2019)
- *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 297, 811 S.E.2d 758, 761 (2018)
- *Michelin N. Am., Inc. v. Inter City Tire & Auto Ctr., Inc.*, 2015 WL 12843179 (D.S.C. 2015)
- *Quarterman v. Radius Eng'g Int'l Inc.*, 2015 WL 6725136, at \*2 (D.S.C. 2015)
- *Walde v. Assoc. Insurance Co.*, 737 S.E.2d 631 (S.C. App. 2012)
- *Crossman Comm. of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, 717 S.E.2d 589 (S.C. 2011)
- *Doe v. New Leaf Academy*, 2011 WL 4434051 (D. S.C. 2011)
- *Kerry White-Brown, D.D.S., P.C. v. Orsborn*, 2010 WL 11530747 (D.S.C. 2010)
- *All American Title Loans v. Title Cash*, 2007 WL 1464580; 2008 WL 60426 (D.S.C. 2008)
- *Frierson v. InTown Suites*, 2007 WL 8400142 (S.C. Ct. App. 2007)
- *L-J., Inc. v. Bit. Fire & Marine Ins. Co.*, 621 S.E. 2d 3 (S.C. 2005)
- *Hawes v. Cart Products*, 386 F. Supp. 2d 681 (D. S.C. 2005)
- *Jacobsen v. Am. Agviation, Inc.*, 2004 WL 6331787 (S.C. Ct. App. 2004)
- *Watkins v. Crescent Enterprises*, 314 F. Supp. 2d 1156 (N.D. OK. 2004)
- *Lee Construction v. Sloan Construction*, 104 Fed. Appx. 323 (4th Cir. 2004)
- *S.C. Pipeline Corp. v. Lone Star Steel*, 546 S.E. 2d 654 (S.C. 2001)
- *Drews Distributing v. Silicon Gaming*, 245 F. 3d 347 (4th Cir. 2001)
- *Mayer v. M.S. Bailey & Son, Bankers*, 555 S.E. 2d 406 (S.C. App. 2001)
- *Republic Contracting Corp. v. SCDOT*, 503 S.E. 2d 761 (S.C. App. 1998)
- *BellSouth v. DeKalb*, U.S. Dist. LEXIS 11443 (D. S.C. 1995)
- *Roberts v. Recovery Bureau*, 450 S.E. 2d 616 (S.C. App. 1994)
- *Sub-Zero Freezer v. R.J. Clarkson Co.*, 417 S.E. 2d 569 (S.C. 1992)
- *Quirk v. Campbell*, 394 S.E. 2d 320 (S.C. 1990)



# CERTIFICATE OF LIABILITY INSURANCE

5/1/2017 DATE (MM/DD/YYYY)  
 4/21/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> LOCKTON COMPANIES 5847 SAN FELIPE, SUITE 320 HOUSTON TX 77057 866-260-3538		<b>CONTACT</b> NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: ADDRESS:	
<b>INSURED</b> MEARS GROUP, INC. 1412207 A QUANTA SERVICES COMPANY 4500 NORTH MISSION ROAD ROSEBUSH MI 48878		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Old Republic Insurance Company NAIC # 24147 INSURER B: ACE Property & Casualty Insurance Co 20699 INSURER C: See Attached INSURER D: INSURER E: INSURER F:	

COVERAGES DASIN01 CERTIFICATE NUMBER: 14018258 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LYR	TYPE OF INSURANCE	ADDL INSR	SUBR LYR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER	Y	N	MWZY 307276	5/1/2016	5/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Y	N	MWTB 307275	5/1/2016	5/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	Y	N	XOC G27972032 001	5/1/2016	5/1/2017	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ 12,000,000 AGGREGATE \$ 12,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	MWC 307277 00	5/1/2016	5/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Property	Y	N	B0180ME1504780	5/1/2016	5/1/2017	See Attached

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Re: Kiawah Island Project.

## CERTIFICATE HOLDER

## CANCELLATION See Attachments

14018258  Kiawah Island Utility, Inc. 31 Sora Rail Road Johns Island SC 29455	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  
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CONTINUATION DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS (Use only if more space is required)

Additional Insured in favor of Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns (on all policies except Workers' Comp/EL) where and to the extent required by written contract. Waiver of Subrogation in favor of Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns on all policies where and to the extent required by written contract where permissible by law. The Insurance afforded to the Additional Insured as described in this Certificate of Insurance for work performed by the Named Insured is primary and non-contributory to any similar coverage maintained by the Additional Insured where and to the extent required by contract. 30 days notice of cancellation is included on the policies.

**Builders Risk / Contractors Equipment / Real & Personal Property Policy No. B0180ME1504780**  
**Insurer: 50% Swiss Re International SE / 50% Lloyds Syndicate Chubb 1882 through R.K. Harrison**  
**Policy Term: May 1, 2016 to May 1, 2017**

**SECTION I - BUILDERS RISK:**

**Limits/Sub Limits:**

\$ 75,000,000	Any One Occurrence for any Insured Project
\$ 10,000,000	Any One Occurrence as respects Covered Property in Temporary Offsite locations
\$ 25,000,000	Any One Occurrence as respects Horizontal Directional Drilling Works
\$ 10,000,000	Any One Occurrence as respects Covered Property in Transit
\$ 10,000,000	Any One Occurrence as respects Debris Removal or 25% of loss amount, whichever is less
\$ 25,000,000	Any One Occurrence as respects Expediting Expense
\$ 2,500,000	Any One Occurrence as respects Extra Expense

**Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):**

\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood - Flood Level 1 and U.S. Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 50,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 50,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

**Valuation:**

The actual cost to repair or replace the lost or damaged property, valued as of the time and place of loss, with material of like kind and quality.

**SECTION II - CONTRACTORS EQUIPMENT:**

**Limits/Sub Limits:**

\$ 50,000,000	Any One Occurrence as respects Contractors Equipment
\$ 5,000,000	Any One Occurrence as respects Property for Rigging

**Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):**

\$ 25,000,000	Any One Occurrence/Annual Aggregate Flood occurring within any Flood Level 1 areas,
\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood within US Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 10,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 25,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

**Valuation:**

For repairing or rebuilding Contractor's Equipment provided by an entity owned or operated by the Insured at the time of physical loss or physical damage: 1) Direct payroll cost for labor directly chargeable to the repair or rebuilding of the damaged Contractor's Equipment; 2) The proper proportion of the Insured's overhead charges, calculated in accordance with principles of Direct Costing; 3) Expenses for the dismantling, transportation, and reassembly, and 4) Materials at cost to the Insured.

**SECTION III - REAL & PERSONAL PROPERTY**

**Limits/Sub Limits:**

\$ 50,000,000	Any One Occurrence as respects physical loss or damage
\$ 5,000,000	Any One Occurrence as respects Extra Expense per premises
\$ 1,000,000	Any One Occurrence as respects Covered Property in Transit

**Aggregate Limits of Liability (Subject to Policy Aggregate Limits of Liability):**

\$ 25,000,000	Any One Occurrence/Annual Aggregate Flood occurring within any Flood Level 1 areas,
\$ 50,000,000	Any One Occurrence/Annual Aggregate Flood within US Territories & Possessions, and the Commonwealth of Puerto Rico and any foreign project location(s).
\$ 10,000,000	Any One Occurrence/Annual Aggregate Earthquake - California
\$ 25,000,000	Any One Occurrence/Annual Aggregate Earthquake - within all other Earthquake Zone1
\$ 25,000,000	Any One Occurrence/Annual Aggregate Named Windstorm within Wind Zone 1

**Valuation:**

The lesser of a) the Replacement Cost, or b) the Amount the Insured Actually Spends to repair, rebuild, or replace the Covered Property at the same or another location. Real Property or Personal Property other than Improvements and Betterments, which is not repaired, rebuilt or replaced, will be valued at the Actual Cash Value at the time and place of loss or damage.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

<b>Designated Construction Project(s):</b>
Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

CG 25 03 05 09

Quanta Services, Inc.

MWZY 307276

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Policy Period: 5/1/2016 to 5/1/2017

Attachment Code : D488277

Certificate ID : 14018258

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 37 04 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location and Description Of Completed Operations</b>
Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns	SC
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

CG 20 37 04 13  
Quanta Services, Inc.

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MWZY 307276

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Policy Period: 5/1/2016 to 5/1/2017



C. With respect to the insurance afforded to these additional insureds, the following is added to

**Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Kiawah Island Utility, Inc., including its subsidiaries, partners, partnerships, affiliated companies, successors, and assigns	SC
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III - Limits of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.